

MONROE COUNTY CLERK'S OFFICE

THIS IS NOT A BILL. THIS IS YOUR RECEIPT.

Receipt # 2012885

Book Page CIVIL

No. Pages: 19

Instrument: EFILING INDEX NUMBER

Control #: 201903140221

Index #: E2019002399

Date: 03/14/2019

Time: 7:37:23 AM

Return To:
JAMES P. FITZGERALD
538 Riverdale Avenue
Yonkers, NY 10705

TESTA, ANITA
TESTA, ANITA

STRONG MEMORIAL HOSPITAL CENTER
UNIVERSITY OF ROCHESTER MEDICAL CENTER
BROCKPORT CENTRAL SCHOOL DISTRICT

State Fee Index Number	\$165.00	
County Fee Index Number	\$26.00	
State Fee Cultural Education	\$14.25	
State Fee Records	\$4.75	Employee: JM
Management		
Total Fees Paid:	\$210.00	

State of New York

MONROE COUNTY CLERK'S OFFICE
WARNING – THIS SHEET CONSTITUTES THE CLERKS
ENDORSEMENT, REQUIRED BY SECTION 317-a(5) &
SECTION 319 OF THE REAL PROPERTY LAW OF THE
STATE OF NEW YORK. DO NOT DETACH OR REMOVE.

ADAM J BELLO

MONROE COUNTY CLERK



SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF MONROE

-----X
ANITA TESTA as Administratrix of the Estate of HANNAH
TESTA DECEASED and ANITA TESTA Individually,
Plaintiff(s),

-v-

SUMMONS

STRONG MEMORIAL HOSPITAL CENTER,
UNIVERSITY OF ROCHESTER MEDICAL CENTER and
BROCKPORT CENTRAL SCHOOL DISTRICT,
Defendant(s).

-----X

To the above named defendant(s):

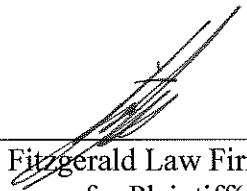
You are hereby summoned to answer the complaint in this action and to serve a copy of your answer or, if the complaint is not served with this summons, to serve a notice of appearance on the undersigned within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded herein.

Monroe County is designated as the place of trial. The basis of venue is the county of the occurrence. The relief sought is monetary damages.

Plaintiff(s): Brockport, NY

Defendant(s): Strong Memorial Hospital: 601 Elmwood Ave, Rochester, NY 14642
University of Rochester Medical Center: 601 Elmwood Ave, Rochester, NY 14642
Brockport Central School District: 40 Allen St, Brockport, NY 14420

Dated: Yonkers, New York
March 13, 2019


The Fitzgerald Law Firm, P.C.
Attorneys for Plaintiff(s)
By: James P. Fitzgerald, Esq.
538 Riverdale Avenue
Yonkers, New York 10705
Tel: (914) 378-1010
Fax: (914) 378-1092
File No.: F18029c

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF MONROE

-----X
ANITA TESTA as Administratrix of the Estate of HANNAH
TESTA DECEASED and ANITA TESTA Individually,
Plaintiff(s),

-v-

STRONG MEMORIAL HOSPITAL, UNIVERSITY OF
ROCHESTER MEDICAL CENTER and BROCKPORT
CENTRAL SCHOOL DISTRICT,

Defendant(s).

VERIFIED
COMPLAINT

-----X Jury Trial Demanded

Plaintiff(s), through the attorneys, The Fitzgerald Law Firm, P.C., allege, upon
information and belief, the following:

THE PARTIES

1. Plaintiff, Administratrix ANITA TESTA, is the mother and natural guardian of decedent infant HANNAH TESTA and has resided at all times material hereto in Monroe County, New York. Decedent died on December 15, 2017.
2. Plaintiff was appointed administrator of the estate of Decedent by the New York State Surrogates Court, Monroe County, on February 1, 2018. A copy of the Letters of Administration is attached hereto.
3. Defendant, Strong Memorial Hospital is a private community hospital that is owned and operated by the defendant University of Rochester Medical Center and located in the county where this action is venued.
4. Defendant, University of Rochester Medical Center is the medical education, research and patient care facility of the University of Rochester.
5. Defendant University of Rochester Medical Center owned, operated, managed and controlled defendant Strong Memorial Hospital.

6. Defendants University of Rochester Medical Center and Strong Memorial Hospital employed all medical providers involved in the care and treatment of Decedent during the relevant times, including but not limited to November 8, 2017 and continuing to decedent's death on December 15, 2017.

7. Defendant Brockport Central School District was a school district organized and existing under and by virtue of the Education Law of the State of New York with its principal business office in Brockport New York, in the County of Monroe, State of New York.

8. Defendant Brockport Central School District operated, maintained, and controlled Brockport High School in Brockport New York.

9. The decedent Hannah Testa was an 11th grade student at Brockport High School.

NOTICE OF CLAIM

10. Pursuant to New York General Municipal Law § 50, a notice of claim was made and served upon the Brockport Central School District on February 27, 2018. A copy of the Notice of Claim is annexed hereto and made part hereof.

11. Pursuant to New York General Municipal Law § 50-i(b), at least thirty days have elapsed since the service of such notice and that adjustment or payment thereof has been neglected or refused.

12. An examination pursuant to New York General Municipal Law § 50-h was held on April 19, 2018.

13. This action is commenced within the appropriate statutory period, including any tolling provisions.

AS AND FOR A FIRST CAUSE OF ACTION
FOR CONSCIOUS PAIN AND SUFFERING

14. Defendant(s) STRONG MEMORIAL HOSPITAL, and UNIVERSITY OF ROCHESTER MEDICAL CENTER their agents, servants, and employees undertook to attend and provide Medical and Psychological care for Decedent in a reasonable, proper, and skillful manner starting on or about November 8, 2017, and continuing until Decedent's death on December 15, 2017.

15. Defendant(s) STRONG MEMORIAL HOSPITAL, and UNIVERSITY OF ROCHESTER MEDICAL CENTER, their agents, servants, and employees were negligent and committed malpractice in their treatment of Decedent by, but not limited to failing to monitor the decedent's condition; failing to transfer the patient to inpatient adolescent hospitalization; failing to properly medicate the decedent and to properly monitor her medications; in negligently failing to effectively collaborate with appropriate persons at Brockport High School concerning the decedent; and in failing to prevent decedent's suicide.

16. Defendant(s) STRONG MEMORIAL HOSPITAL, and UNIVERSITY OF ROCHESTER MEDICAL CENTER, their agents, servants, and employees and agents, servants, and employees provided the care to Decedent at the facilities owned and operated by Defendants STRONG MEMORIAL HOSPITAL, and UNIVERSITY OF ROCHESTER MEDICAL CENTER.

17. Defendant BROCKPORT CENTRAL SCHOOL DISTRICT its agents servants and or employees were negligent in the monitoring, counseling, and supervision of the decedent while in school, and failed to refer the decedent to appropriate medical and counseling services, including a failure to timely and properly perform screening for suicide risk and failing to collaborate appropriately with medical and counseling personnel from defendant Strong Memorial Hospital.

18. Decedent sustained severe and permanent injuries, including, but not limited to, pre-death conscious pain and suffering up until Decedent's untimely death as a result of the negligence and malpractice of Defendant(s) and agents, servants, and employees.

19. The injuries and damages sustained by Decedent were caused solely by the negligence of Defendant(s) and agents, servants, and employees without any negligence on the part of Decedent.

20. Plaintiff's Decedent sustained damages in excess of the jurisdictional limits of all lower courts, which might otherwise have jurisdiction.

AS AND FOR A SECOND CAUSE OF ACTION
FOR WRONGFUL DEATH

21. As a result of the negligence of Defendant(s) and agents, servants, and employees, Decedent sustained severe injuries, which resulted in an untimely death.

22. Decedent left surviving next-of-kin and/or distributees.

23. As a consequence of the foregoing, Decedent's estate became liable for funeral and other expenses.

24. As a consequence of the foregoing, Decedent's next-of-kin and/or distributees lost the services, income, support, and guidance of the Decedent, and all were economically damaged in a sum in excess of the jurisdictional limits of all lower courts which might otherwise have jurisdiction.

AS AND FOR A THIRD CAUSE OF ACTION
FOR LACK OF INFORMED CONSENT

25. Defendant(s) STRONG MEMORIAL HOSPITAL, and UNIVERSITY OF ROCHESTER MEDICAL CENTER and agents, servants, and employees performed some and failed to perform other medical treatments, procedures, and/or diagnostic procedures upon decedent without obtaining the informed consent of decedent or persons on her behalf.

26. Defendant(s) and agents, servants, and employees failed to advise the decedent or persons on her behalf of the risks, dangers, and consequences associated with the performance or non-performance of the aforesaid medical treatments, procedures, and diagnostic procedures.

27. A reasonably prudent person in the position of Plaintiff patient(s) would not have permitted, allowed, or undergone the medical treatments, procedures, and/or diagnostic procedures and would have chosen a different course of treatment if he/she had been fully informed of the risks, dangers, and consequences.

28. As a result of the aforesaid medical treatments, procedures, and/or diagnostic procedures being withheld or performed upon Plaintiff patient(s), without the informed consent of Plaintiff patient(s), Plaintiff(s) sustained personal damages.

29. Such a lack of informed consent is a proximate cause of the damages to Plaintiff(s) for which relief is sought herein.

30. Plaintiff(s) sustained severe and permanent injuries as a result of the failure to obtain an informed consent by Defendant(s) and agents, servants, and employees.

31. The injuries and damages sustained by Plaintiff(s) were caused solely by the negligence and malpractice of Defendant(s) and agents, servants, and employees without any negligence on the part of Plaintiff patient(s) contributing thereto.

32. Plaintiff(s) sustained damages in excess of the jurisdictional limits of all lower courts, which might otherwise have jurisdiction.

AS AND FOR A FOURTH CAUSE OF ACTION ON BEHALF OF PLAINTIFF
ANITA TESTA FOR LOSS OF SERVICES OF A CHILD

33. The plaintiff Anita Testa is the mother and natural guardian of the infant decedent Hannah Testa and as a result of the foregoing has lost the services, and will continue to lose the services of the decedent and was compelled to expend time and money for the care and treatment of the decedent.


34. As a result of the foregoing the plaintiff Anita Testa was injured in a sum exceeding the jurisdiction of all lower Courts.

STATEMENT REGARDING EXCEPTIONS IN CPLR ARTICLE 1602

35. One or more of the exceptions in CPLR § 1602, including but not limited to Subsection 2(iv) and 7 are applicable to all causes of action and Defendants are jointly and severally liable with all other tortfeasors whether parties to this action or not.

Wherefore, Plaintiff(s) demands judgment against Defendant(s) on all causes of action in an amount that exceeds the jurisdictional limitations of all lower courts that would otherwise have jurisdiction over this action, together with the interest, costs, and disbursements of same as allowed by law.

Dated: Yonkers, New York
March 13, 2019



The Fitzgerald Law Firm, P.C.
Attorneys for Plaintiff(s)
By: James P. Fitzgerald, Esq.
538 Riverdale Avenue
Yonkers, New York 10705
Tel: (914) 378-1010
Fax: (914) 378-1092
File No.: F18029c

On the Date Written Below LETTERS are Granted by the Surrogate's Court, State of New York as follows:

File #: 2016-2445/A

Date of Death: December 15, 2017

Name of Decedent: Hannah N Testa
AKA Hannah Nicholette Testa

Domicile of Decedent: County Of Monroe

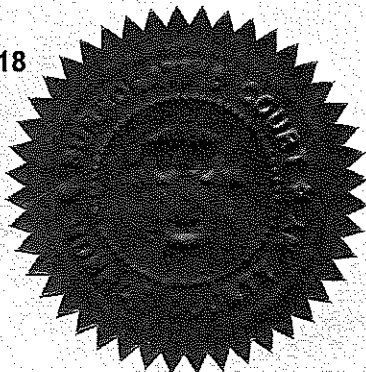
Fiduciary Appointed: Anita Testa
Mailing Address: 23 Dogwood Drive
Hamlin NY 14464

Letters Issued: LETTERS OF ADMINISTRATION

Limitations: NONE


THESE LETTERS, granted pursuant to a decree entered by the court, authorize and empower the above-named fiduciary or fiduciaries to perform all acts requisite to the proper administration and disposition of the estate/trust of the Decedent in accordance with the decree and the laws of New York State, subject to the limitations and restrictions, if any, as set forth above.

Dated: February 1, 2018



IN TESTIMONY WHEREOF, the seal of the Monroe County Surrogate's Court has been affixed.

WITNESS, Hon John M Owens, Judge of the Monroe County Surrogate's Court.



Hon. John M Owens

These Letters are Not Valid Without the Raised Seal of the Monroe County Surrogate's Court

Attorney:
Walter R Capell
Davidson Fink LLP
28 East Main Street Suite 1700
Rochester NY 14614

RECEIVED MAR 05 2019
11:30 a.m. JMW

THE FITZGERALD LAW FIRM, P.C.

538 Riverdale Avenue
Yonkers, New York 10705
Tel: (914) 378-1010
Fax: (914) 378-1092
File No.: F18029

February 27, 2018

VIA: Certified Mail/Return Receipt Requested Cert. #: 7015 1520 0001 1796 4087
and E-mail: TRACEY.DAMBROSIA@BCS1.ORG

Brockport Central School District
Attn: District Clerk
40 Allen Street
Brockport, NY 14420

Re: ANITA TESTA, as Proposed Administrator of the Estate HANNA
TESTA, Deceased

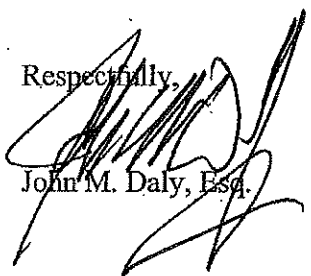
Dear Sir/Madam,

Please find enclosed a timely Notice of Claim, in triplicate, on behalf of Anita Testa, as Proposed Administrator of the Estate of Hanna Testa, Deceased. Please assign your control number and advise of a date for a GML 50-h hearing.

This claim may or may not be timely. We are currently attempting to secure medical and other records, evaluate the injuries and investigate the claim, including the retention of experts where indicated.

Kindly furnish this office with a time-stamped copy in the provided postage-paid return envelope.

Respectfully,


John M. Daly, Esq.

Enclosures

IN THE MATTER OF THE CLAIM OF

-----X
ANITA TESTA, as Proposed Administrator of the Estate
HANNA TESTA, Deceased,

Claimant

-v-

NOTICE OF CLAIM

Brockport Central School District

Defendant(s).

-----X
To: Brockport Central School District
Attn: District Clerk
40 Allen Street
Brockport, NY 14420

PLEASE TAKE NOTICE that the undersigned Claimant(s) hereby make(s)
claim and demand against you as follows:

1. The name and post office address of Claimant(s) and Claimant's attorney is:

Anita Testa as Proposed
Administrator of the Estate of
Hanna Testa, Deceased
23 Dogwood Dr.
Hamlin, NY 14464

The Fitzgerald Law Firm, P.C.
538 Riverdale Avenue
Yonkers, New York 10705
Tel: (914) 378-1010
Fax: (914) 378-1092

- 2. The nature of the claim:** Negligent monitoring, counseling, supervision and referral to medical and counseling services of decedent Hannah Testa resulting in her wrongful death through suicide on December 15, 2017
- 3. The time when, the place where, and the manner in which the claim arose:**
The claim arose while decedent Hanna Testa was a student at Brockport High school from on or about September 5, 2017 through December 15, 2017.

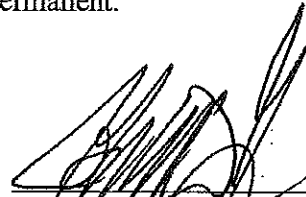
The claim arose as a result of negligent monitoring, counseling, and supervision of the decedent while in school, failure to refer the decedent to appropriate medical and counseling services, including a failure to timely and properly perform screening for suicide risk, and a failure to follow up on the results of those assessments that were performed, failure to collaborate appropriately with medical and counseling personnel from Strong Memorial Hospital and other providers during decedent's partial admission there from November 8 to December 8, 2017, failure to ensure that counseling was properly performed before, during and after school hours, failure to ensure that designated appointments before, during and after the November 8, 2017 to December 8, 2017 partial hospital admission were properly kept, and failure to ensure that parent and

family members were appropriately appraised of decedent's progress or of the lack thereof. All of the exact departures are not fully known to Claimant(s) at this time, as Claimant(s) has been unable to obtain complete school and counseling records prior to the date of this filing.

4. The items of damage or injuries claimed are:

The exact injuries sustained by Claimant(s) are currently unknown; however, they include but are not limited to the following: conscious pain and suffering, emotional distress and death. The full extents of these injuries are unknown at this time. These injuries and damages are permanent.

Dated: Yonkers, New York
February 27, 2018



The Fitzgerald Law Firm, P.C.
Attorneys for Claimant(s)
By: John M. Daly, Esq.
538 Riverdale Avenue
Yonkers, New York 10705
Tel: (914) 378-1010
Fax: (914) 378-1092
File No.: F18029

To: Brockport Central School District
Attn: District Clerk
40 Allen Street
Brockport, NY 14420

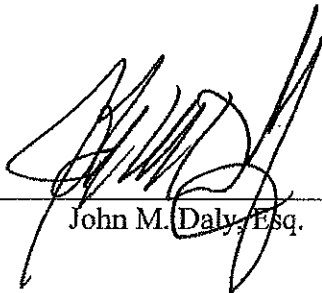
ATTORNEY'S VERIFICATION

STATE OF NEW YORK)
) ss.:
COUNTY OF WESTCHESTER)

The undersigned, an attorney duly admitted to practice in the State of New York, under the penalties of perjury affirms as follows:

1. I am one of the attorneys for Claimant(s) in this action.
2. I have read the foregoing Notice of Claim and know the contents thereof; the same is true to my own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters, I believe them to be true.
3. The reason this verification is made by me and not by Claimant(s) is that Claimant(s) is/are not presently within the county wherein Claimant's(s') attorneys' offices are located.
4. The grounds of my belief as to all matters not stated upon my own knowledge are investigations made and reports of investigation received by me.

Dated: Yonkers, New York
 February 27, 2018



John M. Daly, Esq.

STATE OF NEW YORK)
) ss.:
COUNTY OF WESTCHESTER)

Marcin Jiang, being duly sworn, deposes and says:

1. That I am not a party to the within action; am over 18 years of age and maintain a place of business at 538 Riverdale Avenue, Yonkers, New York 10705.

2. That on February 27, 2018, I served the within

NOTICE OF CLAIM

by depositing a true copy thereof enclosed in a post paid wrapper, in an official depository under the exclusive care and custody of the U.S. Postal Service within New York State, addressed to each of the following persons at the last known address set forth after each name:

Certified Mail/Return Receipt Requested Cert. #:7015 1520 0001 1796 4087

Brockport Central School District
Attn: District Clerk
40 Allen Street
Brockport, NY 14420

e/b

Sworn to before me this

27 day of February, 2018

Notary Public

Daissy Pena
Commissioner of Deeds
City of Yonkers
Certificate Filed in Westchester County
Commission Expires 09/30/2018

IN THE MATTER OF THE CLAIM OF

ANITA TESTA, as Proposed Administrator of the Estate
HANNA TESTA, Deceased,

Claimant

-v-

Brockport Central School District

Defendant(s).

NOTICE OF CLAIM

The Fitzgerald Law Firm, P.C.

Attorneys for Claimant(s)

538 Riverdale Avenue

Yonkers, New York 10705

Tel: (914) 378-1010

Fax: (914) 378-1092

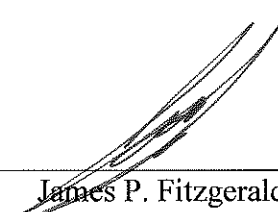
VERIFICATION

STATE OF NEW YORK)
) ss.:
COUNTY OF WESTCHESTER)

The undersigned, an attorney duly admitted to practice in the State of New York, under the penalties of perjury affirms as follows:

1. I am one of the attorneys for Plaintiff(s) in this action.
2. I have read the foregoing Complaint and know the contents thereof; the same is true to my own knowledge, except as to the matters therein stated to be alleged on information and belief and, as to those matters, I believe them to be true.
3. The reason this verification is made by me and not by Plaintiff(s) is that Plaintiff(s) is/are not presently within the county wherein the attorneys' offices are located.
4. The grounds of my belief as to all matters not stated upon my own knowledge are investigations made and reports of investigation received by me.

Dated: Yonkers, New York
 March 13, 2019



James P. Fitzgerald, Esq.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF MONROE

-----X
ANITA TESTA as Administratrix of the Estate of HANNAH
TESTA DECEASED and ANITA TESTA Individually,
Plaintiff(s),

-v-

STRONG MEMORIAL HOSPITAL,
UNIVERSITY OF ROCHESTER MEDICAL CENTER and
BROCKPORT CENTRAL SCHOOL DISTRICT,
Defendant(s).

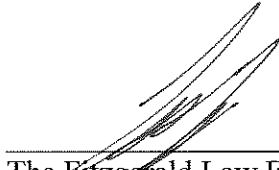
CERTIFICATE OF
MERIT

Pursuant to CPLR § 3012-a, the undersigned, an attorney duly admitted to practice before
the Courts of the State of New York, hereby affirms the following under the penalties of perjury:

1. I am associated with the firm of The Fitzgerald Law Firm, P.C., attorneys for Plaintiff(s)
herein. I am familiar with the facts and circumstances of this proceeding. This affirmation is
made upon information and belief, the source of your affirmant's knowledge being the file
maintained by this office.

2. The facts of the case have been reviewed and at least one physician has been consulted
with who is licensed to practice in this state or any other state and who is reasonably believed to
be knowledgeable in the relevant issues involved in this action, and it has been concluded on the
basis of such review and consultation that there is a reasonable basis for the commencement of
this action.

Dated: Yonkers, New York
March 13, 2019



The Fitzgerald Law Firm, P.C.
Attorneys for Plaintiff(s)
By: James P. Fitzgerald, Esq.
538 Riverdale Avenue
Yonkers, New York 10705
Tel: (914) 378-1010
Fax: (914) 378-1092
File No.: F18029c

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF MONROE

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ANITA TESTA as Administratrix of the Estate of HANNAH TESTA
DECEASED and ANITA TESTA Individually,

Plaintiff(s),

-v-

STRONG MEMORIAL HOSPITAL, UNIVERSITY OF
ROCHESTER MEDICAL CENTER and BROCKPORT CENTRAL
SCHOOL DISTRICT,

Defendant(s).

-----X

**NOTICE OF COMMENCEMENT OF ACTION
SUBJECT TO MANDATORY ELECTRONIC FILING**

PLEASE TAKE NOTICE that the matter captioned above, which has been commenced by the filing of the accompanying documents with the County Clerk via the New York State Courts Electronic Filing System ("NYSCEF"), is subject to mandatory electronic filing pursuant to Section 202.5-bb of the Uniform Rules for the Trial Courts. This notice is being served as required by Subdivision (b) (3) of that Section.

Counsel and/or parties **must either**: 1) immediately record their representation within the e-filed matter on the Consent/Represent page in NYSCEF; or 2) file the Notice of Opt-Out form to claim one of the limited exemptions from mandatory e-filing (see below). Failure to record representation may result in the inability to receive electronic notice of any document filings. Claiming an exemption will require the exempt party to serve and be served with hard copy documents.

Counsel and unrepresented parties who intend to participate in e-filing must first create a NYSCEF account and obtain a user ID and password. For additional information about electronic filing, and to create a NYSCEF account, visit the NYSCEF website at www.nycourts.gov/efile or contact NYSCEF Resource Center (phone: 646-386-3033; e-mail: e-file@nycourts.gov; mailing address: 60 Centre Street, New York, New York 10007).

Exemptions from mandatory e-filing (Section 202.5-bb(e)) are limited to:

- 1) attorneys who certify in good faith that they lack the computer hardware and/or scanner and/or internet connection or that they lack (along with all employees subject to their direction) the operational knowledge to comply with e-filing requirements; and
- 2) parties who expect to represent themselves and who choose not to participate in e-filing. (Such parties are encouraged to visit www.nycourthelp.gov or contact the Help Center in the court where the action is pending.)

Dated: March 13, 2019

James P. Fitzgerald, Esq.
The Fitzgerald Law Firm, P.C.
Attorneys for Plaintiff(s)
538 Riverdale Avenue
Yonkers, New York 10705
Tel: (914) 378-1010
Fax: (914) 378-1092
jfitzgerald@lawfitz.com

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF MONROE

ANITA TESTA as Administratrix of the Estate of HANNAH TESTA
DECEASED and ANITA TESTA Individually,

Plaintiff(s),

-v-

STRONG MEMORIAL HOSPITAL, UNIVERSITY OF
ROCHESTER MEDICAL CENTER and BROCKPORT CENTRAL
SCHOOL DISTRICT,

Defendant(s).

**SUMMONS
VERIFIED COMPLAINT
CERTIFICATE OF MERIT IN MEDICAL MALPRACTICE ACTION
NOTICE OF COMMENCEMENT OF ACTION
SUBJECT TO MANDATORY ELECTRONIC FILING**

THE FITZGERALD LAW FIRM, P.C.

Attorneys for Plaintiff(s)
538 Riverdale Avenue
Yonkers, New York 10705
Tel: (914) 378-1010
Fax: (914) 378-1092
File No.: F18029c

Certification Pursuant to 22 NYCRR § 130-1.1a(b)

I hereby certify pursuant to 22 NYCRR § 130-1.1a(b) that, to the best of my knowledge, information and belief, formed after an inquiry reasonable under the circumstances, the presentation of the papers herein or the contentions therein are not frivolous as defined in 22 NYCRR § 130-1.1(c).

THE FITZGERALD LAW FIRM, P.C.

Attorneys for Plaintiff(s)

By: James P. Fitzgerald, Esq.